



## Economic Impact Analysis Virginia Department of Planning and Budget

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### **8 VAC 20-670 – Regulations Governing the Operation of Private Day Schools for Students with Disabilities**

**Department of Education**

January 13, 2003

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The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

### **Summary of the Proposed Regulation**

The Virginia Board of Education (board) originally adopted the *Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits* (8 VAC 20-13-10 et seq.) in 1970. Those regulations provide the basis upon which private trade, technical, business, and correspondence schools, and private day schools for children with disabilities can be established and operated within the Commonwealth. The proposed new regulations, *Regulations Governing the Operation of Private Day Schools for Students with Disabilities*, separate the current complex and intertwined regulations and provide the basis upon which private day schools for students with disabilities are licensed and operated in accordance with § 22.1-16 and § 22.1-321 of the Code of Virginia. In addition, the proposed new regulations differ in from the *Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits* in several ways including: 1) no fees are included, 2) exempting schools that collect no advance tuition other than equal monthly installments from maintaining a guarantee instrument, 3) allowing schools to

obligate students for more than quarterly increments of their annual tuition if the school makes tuition insurance available, 4) scheduled on-site inspections will occur every three years and unannounced visits may occur anytime, and 5) criminal background checks including fingerprinting are required for school employees.

## **Estimated Economic Impact**

The current regulations include licensure fees, which have not been assessed for at least eight years.<sup>1</sup> The costs to the Department of Education (department) of regulating private day schools for students with disabilities are fully paid for by the federal government.<sup>2</sup> The proposed regulations do not mention fees. Since these fees have not been assessed in many years and there have been no plans to assess them, removing the fee language will have no practical effect beyond avoiding some possible confusion.

The current and proposed regulations require that schools for students with disabilities maintain a guaranty instrument (surety bond, irrevocable letter of credit, or certificate of deposit) as a condition of continued certification or licensing. The purpose of the guarantee requirement is to ensure that schools are financially capable of refunding unused tuition if, for example, a school closed down. The department estimates that maintaining the guarantee instrument costs schools on average about \$100 per year. The board proposes to permit schools that have shown that they collect no advance tuition other than equal monthly installments or are paid after services have been rendered,<sup>3</sup> to apply for exemption from the guarantee requirement. Regarding those schools that do not receive advanced tuition payments, the proposed exemption clearly provides a net benefit for the Commonwealth. The schools reduce their costs by approximately \$100 on average and tuition payers do not lose out since they have no advanced payments at risk.

For schools that receive payments one month in advance, the picture is less clear. The schools will reduce their costs by about \$100 on average. On the other hand, tuition payers could be made worse off by some degree since they do have one month of advanced tuition payments at risk. The amount of benefit they lose depends on the probability that their school

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<sup>1</sup> Source: Department of Education

<sup>2</sup> Ibid

<sup>3</sup> The schools would be required to demonstrate that they collect no advance tuition other than equal monthly installments or are paid after services have been rendered over three years of operation.

will close down, multiplied by the probability that they do not get reimbursed for their advanced tuition if the school closes down, multiplied by the probability that the guarantee instrument held by the school will, in practice, reimburse the tuition payer, multiplied by the amount reimbursed. Since accurate estimates for these factors are not available, the cost of exempting schools that receive tuition payments one month in advance from maintaining a guarantee instrument cannot be determined. But the risk that contracted services will not be provided are present in most commercial transactions without government involvement attempting to eliminate that risk. Firms have the option to purchase insurance (bonding) to assure their customers that their upfront payments will not be lost.

Under the current regulations, private day schools for students with disabilities cannot effectively obligate students for more than quarterly increments of their annual tuition. The prohibition on allowing schools and students (or their parent or guardian) to contract on mutually agreeable terms that may include obligating tuition for more than one quarter is costly. Permitting schools to offer contracts to tuition payers that would financially obligate them for say one semester or the full year, rather than only one quarter, can be significantly beneficial for schools. These schools, like other organizations, need to plan, create budgets, and make expenditures based on expectations of revenue. At least some schools would likely be willing to accept somewhat lower tuition if they could be assured that they will receive more than one quarter's tuition. Some tuition payers who are confident that they will be using more than one quarter of educational service would benefit and would be willing to obligate themselves for more than one quarter's tuition in exchange for lower tuition.

The board proposes to allow schools to financially obligate privately placed students for more than one quarter of the school year at a time if the school offers access to a tuition insurance plan. According to the department, handing a brochure on tuition insurance offered by a third party to the student (or parent or guardian) would satisfy the requirement for offering access to a tuition insurance plan. Tuition insurance is currently readily available. As long as it remains readily available, the board's proposal does in effect remove the prohibition on contracts between schools and tuition payers obligating the payers for more than one quarter's tuition. As discussed above, permitting binding contracts that last longer than one quarter of the year can be mutually beneficial for both schools and tuition payers.

Under the current regulations, schools receive announced on-site inspections by department staff once every two years to determine if their facilities meet licensure requirements, but do not receive surprise inspections. The proposed regulations require announced visits once every three years, but also allow unannounced visits to occur. If two conditions are met, permitting the department to conduct surprise inspections increases the schools' incentives to maintain their facilities such that they would meet licensure requirements year-round. Those conditions are: 1) the inspections occur often enough that the schools perceive there to be a nontrivial chance that they will receive surprise inspections, and 2) the schools perceive that there is a nontrivial chance that they will lose their license or receive some other significant penalty if they do not maintain their facilities such that they would meet licensure requirements.

Unlike the current regulations, the proposed regulations require that staff at licensed schools have criminal background checks, including fingerprints. According to the department, the cost for these checks is approximately \$90 per person. The majority of schools already do conduct criminal background checks. All schools accredited by the Virginia Council of Private Education must conduct checks; 33 of the 61<sup>4</sup> licensed schools in Virginia are so accredited. In addition, many, but not all, of the rest of the licensed schools conduct checks as well.<sup>5</sup> For some schools required criminal background checks will introduce a new cost of doing business.

The benefits of requiring criminal background checks are not as easy to estimate as the costs. Schools are not required to change hiring decisions based upon the results of criminal background checks. But it is likely that schools that are not already conducting criminal background checks will hire fewer individuals whose criminal past may indicate increased probability of abuse toward children when they are required to conduct background checks. Officials at these schools who believe that they can judge a job applicant's character without aid of a criminal background check will have the results of the checks to show them when past behavior indicates that they may be wrong; some reduced probability of hiring individuals with a criminal past relevant to working in a building with children will likely occur. Also, these school officials will know that they cannot plead ignorance in court if their hires with relevant criminal backgrounds commit additional crimes after they are hired. Thus, increased liability concerns will further reduce the likelihood that schools would hire staff with relevant criminal histories.

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<sup>4</sup> Source: Department of Education (numbers will be valid as of December 31, 2002)

## **Businesses and Entities Affected**

The proposed regulatory amendments affect the 61 private day schools for students with disabilities licensed in the Commonwealth, the up to 3,577 students at those schools, and the payers of tuition to the private day schools for students with disabilities.<sup>6</sup>

## **Localities Particularly Affected**

The proposed regulatory amendments affect all localities.

## **Projected Impact on Employment**

The proposed amendments are unlikely to significantly affect total employment levels. The proposal to require criminal background checks may affect which individuals are hired.

## **Effects on the Use and Value of Private Property**

Exempting private schools that collect no advance tuition other than equal monthly installments from maintaining a guarantee instrument will reduce their annual costs by about \$100 and will thus increase their value by the same amount. Allowing schools to obligate students for more than quarterly increments of their annual tuition if the school makes tuition insurance available will enable schools and tuition payers to reach contract agreements that are mutually beneficial. Also, firms that sell tuition insurance may receive additional business. Permitting the department to conduct unannounced inspections may increase schools' incentives to maintain their facilities such that they would meet licensure requirements year-round. For those schools that are not already conducting criminal background checks of their hires, the proposed requirement that they do so will increase their costs. The information received from the criminal background checks may enable them to make better hiring decisions and thus will not necessarily reduce the value of their business by the full amount (if at all) of the background check costs.

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<sup>5</sup> Ibid

<sup>6</sup> According to the Department of Education, there were 61 private day schools for students with disabilities licensed in the Commonwealth on December 31, 2002, and those schools had a combined student capacity of 3,577.